

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 2:24-cv-05636-MWC-SSC Date: February 14, 2025

Title Marcus Clarke v. Warden Brian Birkholz

Present: The Honorable Stephanie S. Christensen, U.S. Magistrate Judge

Teagan Snyder
Deputy Clerk

n/a
Court Reporter / Recorder

Attorneys Present for Plaintiffs:
None Present

Attorneys Present for Defendants:
None Present

**Proceedings: (IN CHAMBERS) Order to Show Cause Why
Complaint Should Not Be Dismissed for
Failure to Prosecute and/or Comply with Court
Order**

On July 1, 2024, *pro se* Plaintiff Marcus Clarke filed a complaint against the Warden of the Federal Correctional Institution Lompoc II. (ECF 1.) The Court screened the complaint as required by statute and, on September 3, 2024, issued an order advising Plaintiff that he had failed to state a civil rights claim under *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971). (ECF 5.) The Court allowed Plaintiff until October 3, 2024, to notify the Court of his intention to proceed on the complaint based on non-*Bivens* claims only, or to file a first amended complaint stating any non-*Bivens* claims in addition to a viable *Bivens* claim. (*Id.* at 6–7.)

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The deadline to respond to the Court's order passed and the Court did not receive any communication from Plaintiff. Accordingly, on October 18, 2024, the Court issued an order to show cause why this action should not be dismissed for Plaintiff's failure to prosecute. (ECF 6.) Following the Court's order to show cause, Plaintiff twice requested extensions of time in which to make an election regarding how to proceed in this action. (ECF 8; ECF 10.) The Court granted both requests, ultimately extending the deadline for Plaintiff's election to January 21, 2025.¹ (ECF 11.) Still, Plaintiff has not complied with the Court's order to make an election regarding how to proceed in this action.

Accordingly, Plaintiff is ORDERED TO SHOW CAUSE, in writing, by **March 17, 2025**, why this action should not be dismissed for failure to prosecute and/or comply with a court order. In the event that Plaintiff wishes to voluntarily dismiss this action, Plaintiff may complete and return the enclosed Notice of Dismissal form, CV-09, by **March 17, 2025**.

If Plaintiff files a notice of intent to proceed with the complaint on non-*Bivens* claims only or a first amended complaint by **March 17**,

¹ The Court notes that, in its second order extending time, it recognized that Plaintiff might have been in transit to a new prison facility and reminded him of his responsibility to update the Court with his new address. (ECF 11.) However, it appears from the Bureau of Prisons' online inmate locator that Plaintiff remains at the same facility. See Inmate Locator, www.bop.gov/inmateloc/ (input registration number 27171-045) (last visited Feb. 13, 2025).

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2025, this order to show cause will be automatically discharged, and Plaintiff need not respond to it separately.

Plaintiff is reminded that this matter has been pending his election since October 2024, and this is the second time the Court has had to issue an order to show cause due to Plaintiff's failure to comply with its orders. He is expressly cautioned that failure to file a timely response to this order to show cause, a notice of intent to proceed with the complaint on non-*Bivens* claims only, or a first amended complaint WILL result in a recommendation to the district judge to dismiss this case for failure to prosecute and/or comply with a court order.

IT IS SO ORDERED.

Initials of Preparer

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